

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Hunters Creek Partnership)
 Dist. 10, Map 58, Control Map 58, Parcel 32.11,) Wilson County
 S.I. 000)
 Commercial Property)
 Tax Year 2005)

CORRECTED
INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$519,500	\$10,898,500	\$11,418,000	\$4,567,200

An appeal has been filed on November 21, 2005, on behalf of the property owners with the State Board of Equalization.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated, §§ 67-5-1412, 67-5-1501 and 67-5-1505. A hearing was conducted on April 5, 2006 at the Wilson County Property Assessor's Office. Present at the hearing were Thomas Ford, the taxpayer who represented himself, Wilson County Property Assessor's Office; Derrick Hammond, Appraisal Specialist, Division of Assessments for the State of Tennessee; Jimmy Locke, Wilson County Property Assessor; and Jeff White, also of the Wilson County Property Assessor's Office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a multifamily apartment complex located at 100 Hunters Point Way in Lebanon, Tennessee.

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(b)(2) & 67-5-1412(e). Nevertheless, the legislature has also provided that:

The taxpayer shall have **a right to a hearing and determination to show reasonable cause** for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made (*emphasis added*).

In analyzing and reviewing Tenn. Code Ann. § 67-5-1412(e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except **where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.** (*emphasis added.*) *Associated Pipeline Contractors Inc.* (Williamson County, Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Wilson County Board of Equalization. It is the taxpayer's burden to prove that he is entitled to the requested relief.

In this case, the taxpayer, Mr. Ford, did not appeal to the Wilson County Board of Equalization. Mr. Ford stated that he has been a CPA since 1967 and a licensed real estate broker for over 30 years. Mr. Ford stated that he requested¹ a hearing before the Wilson County Board of Equalization but never heard anything back from them and he therefore filed this appeal to the State Board of Equalization. TCA § 67-5-1412(2)(e) requires that in order for an appeal to be considered filed in a timely fashion, it must be filed "within forty-five (45) days of the date of notice of the local board action was sent." In this case there was no local board action; however, the filing deadline should have been close of business on August 4, 2005. For the State Board to have jurisdiction, the administrative judge must find that there was reasonable cause to excuse the taxpayer's failure to timely file. Mr. Ford is an accomplished business man but could produce nothing in support of this contention.

ORDER

The administrative judge believes that "reasonable cause" does not exist and Mr. Ford has not sustained his burden, and therefore, the State Board of Equalization does not have jurisdiction to hear this appeal.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of

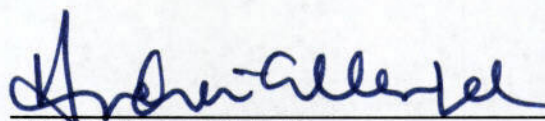
¹ The record was held open for the taxpayer to submit "documentation" that he had made the request.

Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 20th day of July, 2006.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Thomas S. Ford
Jimmy Locke, Assessor of Property